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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of]
]
Amendment of Section 73.202 (b)]
Table of Allotments]
FM Broadcast Stations.]
(Coos Bay, Oregon)]

MM Docket 93-18
RM No. 8137

Comments of Petitioner

Kenton E. Sturdevant, Petitioner in the above captioned matter submits the following comments in support of my Petition For Reconsideration of Action in Rulemaking Proceeding, Filed July 9, 1993, released July 19, 1993, Report No. 1963.

Background

I filed a petition with the Commission on January 15, 1993 to amend the Table of Allocations to add Channel 271A to Coos Bay, Oregon. There were no comments filed in opposition to my petition. On June 25, 1993 the FCC announced the decision which administratively overturned my request for Channel 271A and allocated Channel 228A in it's place. Having specific reasons for selecting channel 271A in order to avoid conflict with present FM Channel assignments and short-spacing with existing or proposed FM stations I petitioned the Commission for reconsideration on July 9, 1993 citing the specific reasons. The announcement of that action was published in the July 23, 1993 Federal Register inviting comments in opposition to be filed by August 9, 1993. There were no comments filed within the specified time in opposition to my Petition.

On August 25, 1993 C & C Broadcasting through its counsel filed late comments in opposition stating their standing in the Matter as the recipient of the assignment of the license of KGAL (FM) from Eads Broadcasting and seeking a construction permit to relocate the transmitter site of KGAL (FM) and seeking to upgrade its facilities to Class C-1. C&C maintains that the action of my Petition For Reconsideration adversely affects

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their interest. Finding that there were no timely comments filed in opposition to my Petition for Reconsideration by the date specified in the published Notice, I had no opportunity or reason to file reply comments within the specified 10 day period as required by Section 1.4(b)(1) of the Commission's Rules. However, recognizing that the Commission may continue to administratively amend their procedures and consider the comments of C&C, I wish to file the following in reply to the comments of C&C.

I wish to point out that the Report and Order Adopted June 17, 1993 and released June 25, 1993 set the filing window for Channel 228A in Coos Bay, Oregon as opening August 10, 1993 and closing September 10, 1993. This is almost concurrent with the comment period on the matter of my Petition for Reconsideration (July 23, 1993 to August 9, 1993) and the allowed reply comment period (10 days thereafter). I have assumed that the filing window has been stayed pending the outcome and determination on my Petition for Reconsideration and have therefore not completed an application for a construction permit in Coos Bay.

**C&C has been procedurally defective throughout
and Petitioners request should prevail**

The record in the matter of the original petition for an amendment to the table of allocations will clearly show that my filings have been in a timely manner, that there were no timely comments filed in opposition to the allocation and that C&C's filings were received and accepted at the Commission after my original Petition.

The date of submission of my original Petition was January 15, 1993, adopted January 29, 1993, released February 17, 1993 with a Comment Due Date of April 12, 1993 and Reply Comment Date of April 27, 1993. The application of the proposed upgrade and change of location for KGAL (FM) was originally assigned BMPH-930107IE, received by the Commission on January 7, 1993. The application was rejected as procedurally defective for failure to include the proper fee and returned to the applicant. It was subsequently re-filed and accepted as BMPH-930222IG, February 22, 1993 five days after the release of NPRM 93-18 concerning the Amendment of the Table of Allocations.

FCC 86-562 Report and Order, adopted 12/23/86, released 2/17/87 in the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1985 amended the FCC Rules and Regulations concerning fee collection policies. Subsequently Section **1.1107, (Payment of Fees)** states, "*Filings for which no remittance is received or for which an insufficient remittance is received shall be dismissed and the application returned to the applicant or his designated agent without processing.*" Clearly the application for the KGAL (FM) upgrade was dismissed without

processing only to be resubmitted well after the NPRM for the Coos Bay allocation was issued. During the period of time that application BMPH-930107IE was dismissed as defective and the subsequent acceptance of BMPH-930222IG, neither C&C or Eads Broadcasting Corp. were on file with the Commission for the upgrade of KGAL (FM). C&C had ample opportunity during the comment period on my original petition to object to the proposed allocation in Coos Bay, Oregon. They failed to do so, and now, over four months late, choose to challenge the action through their opposition to my Petition for Reconsideration. My petition for the Amendment of the Table of Allocations clearly predated the Filing of the application to upgrade the facilities of KGAL (FM), should have been classified as superior to, and processed promptly, dismissing the KGAL (FM) upgrade request.

**C&C's allegations as to my intentions and rationale
are without merit or fact**

C&C claims that my petition is "*procedurally defective.*"

Perhaps, however I made a specific effort not to displace KWAX (FM) which is why I desired Channel 271 A and I wished to make the Commission aware of that fact. I don't have a budget that allows me the luxury of representation by counsel, nor did I think it was necessary for what should be a simple procedural matter as obtaining an allocation.

C&C states, "*Having chosen not to declare his reasons for choosing Channel 271A in his petition or later comments, he cannot be heard now to complain he was denied the opportunity to present that information to the Commission.*"

I was unaware of any rule requiring me to specifically state the exact steps, dates and other reasons that went into my selection of a frequency in the original filing of a Petition to Amend the Table of Allocations. Subsequent to the Commission's administrative decision to substitute Channel 228A for Channel 271A I believed it was appropriate to list the reasons for my decision.

C&C states that I have no "*standing*" or basis of authority to speak on behalf of KWAX FM. or the State of Oregon.

Admittedly true, but I was just relaying the information and facts as they were stated to me. I was not attempting to speak on behalf of KWAX, but was pointing out my concern for the service they provide to the Coos Bay area and my desire not to cause a disruption to that service or cause KWAX economic hardship, which was a valid part of my decision to not request Channel 228A.

C&C claims, "*...the real point of Mr. Sturdevant's petition is to challenge the upgrade application of station KGAL (FM).*"

Pure hogwash! C&C gives no reasons for jumping to this conclusion. I formerly lived in the Coos Bay area between 1971 and 1978, employed in radio and television during that time. I still have family and many acquaintances in the area. If I am able to secure the allocation in the market I desire and prevail in obtaining a license, other than to ensure the KGAL (FM) operation does not cause adjacent channel interference to the Coos Bay area, I could give a damn what KGAL does with its upgrade. It would have no direct market impact in the Coos Bay area. Brownsville and Coos Bay Oregon are over 90 miles apart, separated by a 3,000 foot mountain range and are entirely different communities, Coos Bay on the coast and Brownsville in the mid-Willamette Valley.

I also formerly lived in Sweet Home, Oregon, just 13 miles East of Brownsville having built a radio station (KFIR) there in the late '60's. I know the benefits that an upgraded Brownsville station could bring to the area. I have no intention of depriving residents in the area of improved reception and programming diversity.

Contrary to the erroneous assumptions and claims made by C&C, my concern for the potential disruption of translator service of KWAX (FM) is genuine and sincere. While C&C takes offense to my reference to economic hardship to KWAX, I can sincerely state that in my planning and budgeting for this project, I did not project funding to assist KWAX in switching channels to continue their non-commercial service to the area.

I suggest that C&C, a successful broadcaster, is doing whatever means they can devise, using their highly paid attorney, (no matter how procedurally deficient) to stop a small businessman from developing a dream.

Options exist to satisfy all parties concerned

Notwithstanding my concern that even though my petition for the allocation of Channel 271A was accepted by the Commission before the application for the modification of KGAL (FM) was even filed, yet that application seemingly received preferential treatment, I believe that options exist that will serve all parties. My desire is to obtain the allocation of channel 271A in Coos Bay, Oregon. A second desire is to not cause disruption of classical music programming provided to that area by KWAX (FM). The other objective, held by C&C, and/or Eads Broadcasting is to upgrade the Facilities of KGAL (FM).

KGAL (FM) could upgrade at their present site, channel protection can be maintained and they will obviously be able to provide greater service to the Brownsville community. Their current site is on a rural hilltop with no other co-located broadcast facilities and other than perhaps to upgrade power line service and add additional tower height there should be no other detrimental factors.

KGAL (FM) could upgrade by locating at Prairie Peak (44-17-35N, 123-32-15W) approximately 28 miles West Southwest of the Community of Brownsville and with a directional antenna, adjacent channel protection could be maintained. This site is already the home of KDUK (FM), Florence-Eugene and offers an even better site elevation (approximately 3276 Feet AMSL) than does the existing KGAL (FM) site. From the standpoint of providing service to the Brownsville Community, it is superior to the proposed site (Blanton Heights, Eugene approximately 1200 feet AMSL).being almost the same distance away but at a much higher elevation. This alternative would require a directional antenna to provide a null in the direction of Newport, Oregon (approximately 315 degrees at approximately 30 miles) to protect the second adjacent channel 274 (KYQT Newport, class C1, 102.7 MHz) and a null in the direction of Coos Bay (approximately 210 degrees at approximately 70 miles). Terrain factors may mitigate the need for a null toward Coos Bay. A benefit would be not wasting power over remote uninhabited coastal mountain ranges and national forest land, providing maximum coverage to the Brownsville Community to the East. Prairie Peak is developed with an existing tower and building capable of holding their transmission equipment. In case there is any doubt, I know first hand, from helping to build, install and maintain facilities at that site.

KGAL (FM) could upgrade and move to Eugene, Oregon as they so very much desire if the Commission would implement a restriction at the site (Blanton Heights) and require a directional antenna oriented away from Coos Bay, Oregon (approximately 230 degrees). This would have the added benefit of actually enhancing their coverage to the Brownsville Community (approximately 29 miles away). From Eugene, the Coos Bay and Brownsville areas are in opposite directions, thus the KGAL (FM) main power lobe would be approximately 15 degrees. A directional antenna with a null to protect Coos Bay would actually help KGAL (FM) by not wasting power over the rather uninhabited rural area to the South Southwest of Eugene.

An additional developed site exists just North of Eugene that is only 19 miles from Brownsville, Oregon. Coburg Ridge (44-06-59N, 122-59-55W at approximately 1900 feet) is the location of KMTR-TV, KEZI-TV and KPNW (FM).

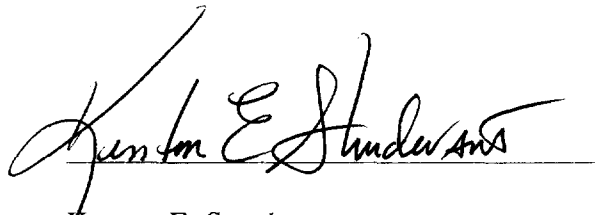
SUMMARY

Clearly C&C has been procedurally deficient in raising any opposition to my desire to Amend the Table of Allocations, adding Channel 271A in Coos Bay, Oregon. Their request to upgrade the facilities of KGAL (FM) was accepted subsequent to my filing being accepted by the Commission and put on public notice. They did not file any comments in opposition to my Petition to Amend during the prescribed comment

period. They did not file any comments in opposition to my Petition for Reconsideration within the prescribed comment period and in their late filed comments, they make gross assumptions and erroneous statements concerning my intentions, concerns and desires. Their comments on my Petition for Reconsideration should be summarily dismissed.

Options exist to satisfy my desire to obtain channel 271A in Coos Bay, Oregon without needless disruption of non-commercial service of KWAX (FM) and additionally satisfy the desire of C&C to upgrade the facility of KGAL (FM). The public interest of two, rather than just one community would best be served.

Finally, and I feel more importantly, the Commission should not waiver from the long standing policy of first-in, first-served as they have appeared to have done in this instance.

A handwritten signature in black ink, reading "Kenton E. Sturdevant", written over a horizontal line.

Kenton E. Sturdevant
Petitioner
295 E. 41st Ave
Eugene, Oregon 97405

September 23, 1993

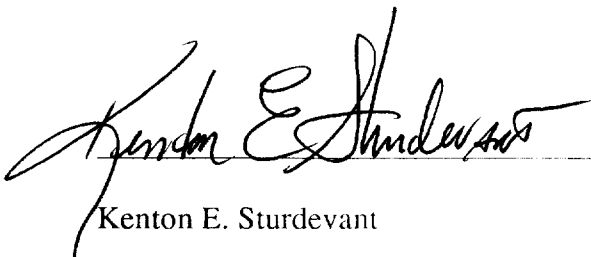
CERTIFICATE OF SERVICE

I, Kenton E. Sturdevant, hereby certify that a true copy of the foregoing "Comments of Petitioner" was mailed, postage prepaid, this 23rd day of September, 1993 to:

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